

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007



January 26, 2016

Ken Pimlott
Director, CAL FIRE
1416 Ninth Street, Room 1505
P.O. Box 944246
Sacramento, CA. 94244-2460

RE: RPF/LTO Responsibilities

Director Pimlott,

In 2013, Associated California Loggers (ACL) responded to the Board of Forestry and Fire Protection's (Board) annual call for regulatory review with the request to have the Board investigate Registered Professional Foresters (RPF)/Licensed Timber Operators (LTO) responsibilities and the perceived inequitable treatment of LTO's by the Department in the issuances of violations of the Forest Practice Rules (FPR) as they relate to the responsibilities of these licensed professionals. Public testimony has made it clear that the ACL, and LTO community in general, take issued FPR violations very seriously as they can affect reputation, working relationships, and ultimately the bottom line of an LTO's business success. The issue was prioritized by the Board's Forest Practice Committee, and subsequently delegated to the Professional Foresters Examining Committee (PFEC) for thorough review and recommendation.

Over the period of many months, the PFEC researched the issue through review of Department data on violations, the existing Forest Practice Rules, Public Resources Code and heard testimony from both the Department and other affected stakeholders. As a result, the PFEC developed the following problem statement:

"Issues arise when RPFs do not complete their field work correctly and thoroughly, putting the LTO in a position to be cited by CALFIRE for violating the Forest Practice Rules (FPRs). In some cases, LTOs are being issued violations for following incomplete or inaccurate field work that was performed by a RPF. The RPF is responsible for their work, along with any ramifications that occur if their work is not performed correctly. "

In response, the Board considered pursuing regulatory revisions that would further define or clarify the professional responsibilities of RPFs and LTOs as they relate to FPR implementation and compliance. As part of this consideration the Board recognized through testimony from the Department in Forest Practice Committee, the existing discretion the Department has and applies in the assignment of responsibility for violations of the FPRs. As a result, the Board believes CAL FIRE policy does not require a timber operation violation resulting from inaccurate or inadequate THP preparatory work performed by an RPF, or their designee, be issued to the LTO, but rather the Department can, where evidence warrants, issue the violation to the RPF responsible for the preparatory work. Consequently, the Board at this time has decided not to pursue any rule changes relative to this matter *unless additional information is provided by the Department indicating the Board's understanding of CAL FIRE's existing discretion is inaccurate.*

In addition to the importance of the fair and appropriate assignment of responsibility in the event of a FPR violation, the Board also wishes to bring to the Department's attention recommendations made by the PFEC for proactively addressing ACL's concerns. Specifically, these include the integration of LTOs and private practicing RPFs into Departmental trainings, and collaboration with both the ACL and the California Licensed Foresters Association (CLFA) in a *review of Departmental policies and procedures applicable to active inspections, investigations, and issuance of violations.*

The Board recognizes and commends findings by the PFEC that the Department has recently engaged with the RPF and LTO communities in the Basic Forest Practice trainings. Where feasible and appropriate, such integrated training between LTOs, RPFs, and Department is likely to foster an improved working relationship among these parties and potentially result in greater compliance and environmental protection. The PFEC recommends that further integration of LTOs and RPFs into other Departmental education opportunities should be a primary focus during the planning of future training courses such as:

- Forest Practice Enforcement;
- Forest Pest Identification and Management;
- Growth and Yield, Mensuration and Silviculture; and
- Workshops in response to new or revised Board regulatory standards.

Similarly, collaboration between the Department and the LTO and RPF community in identifying and understanding CAL FIRE inspection and enforcement policies will work to ensure all parties have a similar understanding of how the FPRs are enforced. The PFEC has ascertained that not all LTOs and RPFs are aware of or fully understand the Department's forest practice enforcement policies, such as what distinguishes between a 'warning' and a 'violation', or the opportunity to appeal or otherwise request review of an action when the party receiving the violation or citation believes CAL FIRE acted in err or without consideration of all available information.

It is the Board's desire to be responsive to the concerns brought forth by the LTO community and substantiated by the PFEC. Therefore the Board respectfully requests that the Department *take any and all necessary action* to ensure CAL FIRE forest practice inspectors recognize and apply appropriate discretion when assigning responsibility for a forest practice violation to ensure the most responsible party is held accountable. *If the Department believes that regulatory changes to the FPRs are necessary to ensure the appropriate responsible party for a violation can be legally held accountable, the Board would like to know.* The Board also requests the Department considers and acts upon the above PFEC recommendations regarding continued integrated education and collaborative policy review in a manner CAL FIRE believes most feasible and effective in consultation with the ACL.

The Board will continue to monitor this issue and make time for a future update from the ACL, California Licensed Foresters Association (CLFA), and the Department as to progress being made to address this important matter.

Respectfully,

J. Keith Gilles
Chairman
Board of Forestry and Fire Protection

DRAFT